IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Mohan Lal vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.4814/93)

Dated:- 18th September,2006

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Sanjay Mathur,Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advocate for the respondents.

The petitioner Mohan Lal has filed this writ petition challenging charge-sheet dated 10th October, 1999, order of penalty dated 31st March, 1992 as also order passed by the Appellate Authority dated 31st March, 1992.

Facts in brief are that the petitioner was working on the post of constable with the respondent. He was placed under suspension by Superintendent of Police, Churu vide order dated 30th August, 1991 and was served with a charge sheet under Rule 16 of the Rajasthan Civil Services(Classification, control and appeal)Rules, 1958 (for short "the Rules of 1958) on 11th

October, 1991. Charges against the petitioner was that petitioner alongwith one Prem Singh another constable proceeded to Jaipur as Treasury Guards on 11th September, 1991.The petitioner and Prem Singh later reached Sangam Chauraha, Ratangarh in the night intervening 12-13th August, 1991 with their rifles and illegally started checking the vehicles passing through that road and they collected money from such vehicles. They also mis-behaved with the staff of Police Station, Ratangarh on 13th August, 1991 at 4.15 a.m. The petitioner submitted application to the disciplinary authority for supply of various documents. He was however allowed to inspect the records on 28th October, 1991. The petitioner submitted reply to the charge-sheet dated 11th October, 1991. Additional Superintendent of Police, Churu was appointed as Enquiry Officer by order dated 5th December, 1991. Reader to Additional Superintendent of Police was appointed as Presenting Officer from the side of prosecution. It being a joint enquiry, both the petitioner and Prem Singh were directed to communicate name of the defence counsel. Both of them requested for allowing Shri Randhir Singh, A.S.I. Police Chowki, Dharam Stoop, Churu to act as their defence counsel and their request was accepted. During enquiry the department examined as many as nineteen witnesses and also exhibited nineteen documents, five witnesses were examined by the delinquent. While witnesses of the department have supported

the charges, witnesses examined by the delinquent official who were mostly owners of the shops situated at Sangam Chauraha, Ratangarh denied the fact that delinquents had illegally extracted money from the drivers of the vehicles. The Enquiry Officer submitted his report on 26th March, 1992, copy of which was served on the petitioner by the disciplinary authority on 30th March, 1992. The Disciplinary Authority by order dated 31st March, 1992 imposed penalty of stoppage of five annual grade increments with cumulative effect and also reduced the pay of the petitioner at the minimum of the pay scale i.e. of Rs.855/. Feeling aggrieved thereby, the petitioner preferred an appeal before the Dy. Inspector General of Police, Bikaner Range, Bikaner, who by order dated 3rd September, 1992 dismissed the appeal. Hence this writ petition.

The respondents have contested the writ petition and filed reply thereto. In the reply it has been stated that petitioner and Prem Singh were both found checking vehicles at Sangam Chauraha, Ratangarh whereas they were not posted at that place by their superiors. Prem Singh mis-behaved with the staff of the Police Station,Ratangarh at 4.15 a.m. on 13th August, 1991. As regards demand and supply of the documents, it has been submitted that the petitioner was allowed to inspect relevant documents for the purpose of enquiry. It was denied that the

petitioner was not allowed reasonable opportunity to defend himself. When the petitioner has admitted that he was allowed to inspect relevant records, non-supply of copies has not caused any prejudice. The petitioner was provided services of the government servant nominated by him to act as his defence assistant. It has been stated that the petitioner has delayed the enquiry by filing number of applications one after another on trivial issues. The petitioner moved application for change of Enquiry Officer on the ground that he is acting in arbitrary and mala fide manner which indicates that petitioner was consistently moving applications simply for the reason of adopting dilatory tactics in one way or other to hamper the process of enquiry. The petitioner has requested change of the his defence counsel which was accepted and Reader of Crime Branch was appointed as his defence counsel. The Enquiry Officer found the charges proved against the petitioner and Disciplinary Authority confirmed the finding of the Enquiry Officer and rightly passed the penalty order. The Appellate Authority also duly considered the appeal and decided the same by a speaking order.

I have heard Mr.Sanjay Mathur, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy.Government Advocate for the respondents and perused the record.

Mr. Sanjay Mathur, learned counsel for the petitioner argued that petitioner was not supplied with the copies of the statements recorded in the preliminary enquiry and the disciplinary authority also did not supply these documents. The petitioner was only allowed to peruse the various documents. Non-supply of documents prejudiced the case of the petitioner. The order passed by the Disciplinary Authority is clumsy which does not reflect application of mind. The Disciplinary Authority has not adhered to the requirement of sub-rule (9) of Rule 16 of the Rules of 1958 which puts an embargo on the disciplinary authority that if he is himself not the Enquiry authority then he will consider the record of the enquiry and record its finding on each charge. The Disciplinary Authority has simply re-produced contents of the enquiry proceedings and thereafter imposed penalty without giving his finding on each of the charges. While the petitioner was supplied copy of the enquiry report on 30.3.1992 without affording a reasonable opportunity to the petitioner to submit his objections/representation agianst findings recorded in the enquiry report .The Disciplinary authority imposed penalty on the very next day on 1st April, 1992. The petitioner immediately sent a letter to the Disciplinary Authority as also to the Dy.Inspector General of Police, Bikaner Range, Bikaner that he has not been provided reasonable opportunity to make representation against the enquiry report

and the Disciplinary Authority has hurriedly passed the order dated 31st March, 1992. His appeal was rejected by the Appellate Authority who also failed to examine as to whether the rules have been correctly followed or not and also to the question whether the penalty imposed was adequate or excessive. The appeal has not been considered by the Appellate Authority in the manner prescribed by Rule 30 of the C.C.A. Rules and has been decided in a cryptic manner. The Enquiry Officer has recorded only findings and has not paid any heed to the statements of the defence witnesses. The Enquiry Officer while relying on the statements of the witnesses produced by the department had not paid any heed to the statement of constable Kashi Nath, who specifically mentioned that Mohan Lal and Prem Singh were with him on 11th August, 1994. The petitioner also produced a railway warrant showing that 12 persons travelled from Jaipur to Churu in night of 13th of August, 1992 in Ganganagar Express. None of these documents have been considered by the Enquiry Officer. It has therefore been submitted that most of the enquiry proceedings were conducted and completed by the Presenting Officer Shri Damodar Prasad who in fact was also working as Reader of the Additional Superintendent of Police and was appointed as Presenting Officer. The enquiry proceeding was therefore an empty formality. The Enquiry Officer simply put his signatures on the proceedings drawn by the presenting officer.

On the other hand, Mr. Rameshwar Dave, learned Dy.Government Advocate argued that the Enquiry Officer has taken into consideration all the relevant documents and entire records as well as the record from the side of defence. The enquiry has been conducted strictly in accordance with the provisions under the C.C.A Rules. The petitioner cannot invite this Court into re-appreciating the evidence so as to arrive at a different conclusion which was recorded by the enquiry officer. The Disciplinary Authority has applied its mind to entire evidence on record and inspite of the fact that the charge proved against the petitioner was grave has awarded only stoppage of five grade increments and reduction of the pay to the minimum of the pay scale. The Appellate Authority has also considered the matter thoroughly and after due application of mind decided to reject the appeal. Principles of natural justice were followed in letter and spirit. Mere non-supply of the copies of the statements recorded in the preliminary enquiry would not in any manner prejudice the case of the petitioner. It has been argued that apart from the petitioner, same penalty was also imposed on the co-delinquent Prem Singh.

I have considered the arguments advanced by both the learned counsels and perused the record.

The charges against the petitioner as found proved are that he was supposed to go on duty with Kashi Nath, Sub Inspector of Police,Churu for accompanying him in the security of the treasury from Sadulpur to Jaipur on 11th August, 1991. Both petitioner and Prem Singh absented from their duties and reached at Sangam Chauraha, Ratangarh in the night intervening 12-13th August, 1991 with the rifles issued to them. They started illegally extorting money from the drivers of the vehicles passing through that Chauraha and when police staff of Ratangarh on night patrolling reached there and asked them to refrain from indulging in this illegal action, they mis-behaved with them. An entry to this effect was made in the Roznamcha Aam of Police Station vide Rapat No.669 dated 13.8.1991 at 4.15 a.m. The enquiry officer has found these charges proved by the statements of P.W. 3 Bhanwar Singh, Head Constable, P.W.4 Shanker Singh, Head Constable, P.W. 5 Chotu Ram, Sub Inspector, P.W. 6 Ami Chand, L.A.C., P.W. 7 Narendra Kumar, Sub Inpsector, P.W. 8 Ranjeet Singh, Constable, P.W. 9 Jeev Raj Singh, Constable, P.W. 10 Sultan Singh, Constable, P.W. 11 Madan Lal, Constable, P.W. 12 Rohitash Kumar, Constble and P.W. 14 Ramkumar, Constable . Supporting documents which have been relied upon by the Enquiry Officer to prove the charge no. 1 against the petitioner are Exs. 1 to 5, 7 to 9 and 11 to 14.

Similarly, charge no. 2 was also found proved against the petitioner from the evidence of P.W. 5 Choturam, A.S.I., P.W. 6 Amichand, L.H,.C., P.W. 7 Narendra Kumar, Sub Inspector, P.W. 8 Ranjeet Singh, Constable, P.W. 9 Jeev Raj, Constable, P.W. 10 Sultan Singh, Constable, P.W. 11 Madan Lal, Constable, P.W. 12 Rohitash Kumar, Constable and P.W. 14 Ramkumar, Constable and the documents which proved the charges against the petitioner were Exs. 7 to 18. When the petitioner demanded copies of the documents which were mostly statements recorded in the present enquiry report, he was allowed to inspect all these documents. Merely because the documents were not supplied, it cannot accepted that petitioner was prejudiced. Such a plea cannot be accepted until the petitioner has proved it really prejudiced to him. Statements of the witnesses were recorded in enquiry by the enquiry officer in his presence with opportunity granted to him to cross-examine him and documents produced in enquiry were also supplied to him, it cannot be accepted that he was not allowed to participate in the enquiry and enquiry procedure was violated. Moreover, as many as 5 witnesses named by the petitioner has been summoned as defence witnesses. The petitioner had alleged bias on the part of the presenting officer and on his request, the presenting officer was also changed vide order dated 15th August, 1991. The Disciplinary Authority has applied its mind to the evidence on

record and passed a reasoned order. Even though the petitioner has submitted that the documents were supplied to him only one day prior to passing of the impugned order of penalty, it has to be examined whether supply of the documents on 30th March, 1992 has in fact caused any prejudice to the petitioner. It is trite law that in appropriate cases, the order of penalty can be upheld even without the report of enquiry of being supplied to the delinquent. In the present case, not only the enquiry report has been supplied to him but he had been provided with services of defence assistant throughout. The petitioner has not been able to point out as to how he was prejudiced by delayed supply of the enquiry report. The Disciplinary Authority after due application of mind from the record and the evidence of the case has decided to impose the penalty of withholding of five grade increments with cumulative effect by reducing his salary to the minimum of the scale and a same penalty was also imposed on Prem Singh. The Enquiry Officer having considered the matter in its entirety did not deem it appropriate to interfere in the matter. The matters arising out of the disciplinary enquiry has very limited scope of interference by this Court in exercise of its powers under Article 226 of the Constitution of India. In doing so, this Court cannot re-appreciate the evidence so as to arrive at a different finding than what has been arrived at by the Disciplinary Authority as well as by the Enquiry officer and has

been approved by the Disciplinary Authority just because it is possible to take another view on those facts. When the petitioner has failed to point out any grave procedural error which caused mis-carriage of justice, I do not find any good reasons to make any interference in the present matter.

In the result, I do not find any merit in this writ petition. The same is hereby dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.